

Service Date: March 30, 2000

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

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IN THE MATTER of the Petition of)	
U S WEST Communications, Inc., and)	UTILITY DIVISION
Citizens Telecommunications Company of)	
Montana Concerning the Sale of Certain)	DOCKET NO. D2000.1.11
Telephone Exchanges.)	ORDER NO. 6240a

PROTECTIVE ORDER

BACKGROUND

On January 21, 2000, U S WEST Communications, Inc. (U S WEST) and Citizens Telecommunications of Montana (Citizens) (jointly, Applicants) filed a request with the Montana Public Service Commission (Commission) for a Declaratory Ruling regarding the sale and transfer of nine telephone Montana exchanges in Colstrip, Conrad, Cooke City, Cut Bank, East Glacier Park, Fairview, Forsyth, Shelby, St. Mary and West Glacier (jointly, the Exchanges). Applicants requested a protective order pursuant to § 69-3-105(2), Montana Code Annotated (MCA), anticipating that there may be data requests requiring disclosure of trade secret information or confidential information related to the right of privacy of employees.

The Commission considers it appropriate to issue a Protective Order, to provide a procedure for balancing the public's right to know against the providing party's right to nondisclosure of confidential trade secret information, or information in which the employees have a right of privacy. This order affords interested parties an opportunity to challenge the confidential designation. In issuing this order, the Commission is not deciding or expressing any opinion as to whether the information is confidential trade secret information under Montana law, or information in which its employees have a constitutionally protected right of privacy.

Wherefore the Commission issues the following Protective Order covering information claimed to be of a trade secret nature submitted by Applicants in Docket No. D2000.1.11 ("providing party" or "providing parties"), or information in which the providing parties' employees have a reasonable expectation of privacy ("proprietary information").

ORDER

IT IS ORDERED that this Protective Order covering the material and information described by Applicants in the Motion and filed throughout the proceedings in Docket No. D2000.1.11, determined by Applicants to be confidential, shall be in effect, unless there is a Commission or Applicants decision that the information need not remain protected, as provided in this Order.

(1) Confidential Information .

(a) Proprietary Information. All documents, data, information, studies and other materials furnished pursuant to any interrogatories, requests for information, other discovery requests, or subpoenas and depositions, or pursuant to Commission order, that are claimed to be trade secret, privileged or confidential shall be furnished pursuant to the terms of this Order. All persons accorded access under this Order shall treat this trade secret, confidential or privileged commercial and financial information as confidential (referred to as "Proprietary Information"). Proprietary Information shall not be used nor disclosed except for the purpose of this proceeding, and solely in accordance with this Order. Applicants shall mark or stamp all material claimed to be Proprietary Information with a designation indicating its trade secret, proprietary or confidential nature, and submit this Proprietary Information to the Commission on yellow paper for identification for filing purposes.

(b) Use of Proprietary Information and Persons Entitled to Review. All Proprietary Information submitted pursuant to this Order shall be given solely to counsel for the parties and shall not be used or disclosed except for purposes of this proceeding or as otherwise permitted by subsequent Commission order. Counsel may authorize access to specific Proprietary Information as follows:

(i) Five (5) days written notice (counted from the date of receipt by the providing party) shall be given to the party that produced the Proprietary Information. The notice shall contain the name, title, job description, description of previous positions and experience, and area of expertise of any person to be given access to such information. Such experts may be an employee of a party, provided that such employee's duties are solely dedicated to regulatory activities on behalf of the party and the employee's duties are unrelated to marketing or strategic planning of competitive products or services, including those provided by any party to this proceeding.

(ii) If it is the good faith position of the party that produced the Proprietary Information that the designated person should not be given access to the information, that party must respond to the notice with a written objection.

(iii) If the party proposing that access be given to the designated person does not receive written objection by the party producing the Proprietary Information within five (5) days after receipt of the written notice, counsel for that party shall be authorized to provide access to the information to the designated person.

(iv) If the party producing the Proprietary Information objects to access by the designated person to the Proprietary Information, the party requesting the access and the party producing the information shall attempt to resolve the objection. If these parties are unable to resolve the objection, either may apply to the Commission for ruling on the access. Access to the information shall not be given, pending resolution of the objection by the Commission.

(v) Any member of the Public Service Commission and staff, the Consumer Counsel and its staff and staff members of intervenor State agencies may have access to any Proprietary Information provided under this Order, and shall be bound by the terms of this Order.

(2) Nondisclosure Agreement. Before giving access to Proprietary Information to any counsel or expert pursuant to ¶ 1(b), counsel for the party seeking review of the Proprietary Information shall deliver a copy of this Order to the person, who shall agree in writing to comply with and be bound by this Order before disclosure. Proprietary Information shall not be disclosed to any person who has not signed a nondisclosure agreement form incorporated herein as Exhibit "A." Exhibit "A" requires the persons obtaining disclosure first to read a copy of this Protective Order and certify in writing that they have reviewed the Order and consent to be bound by its terms. The agreement shall contain the signatory's full name, permanent address and employer, and the name of the party with whom the signatory is associated. The agreement shall be delivered to counsel for Applicants and a copy delivered to the Commission.

(3) Delivery of Documentation. Where feasible, Proprietary Information will be marked as such and delivered to counsel. The Proprietary Information may also be made available for review by counsel and experts accorded access in a place and a time mutually agreed on by the parties, or as directed by the Commission.

(4) Challenge to Confidentiality. This Order establishes a procedure to expedite handling of information that a party claims is confidential; it shall not be construed as an

agreement or ruling on the confidentiality of any such document. A party to this proceeding or the Commission on its own motion may challenge the providing party's claim of confidentiality at any time. The providing party may request a hearing or oral argument before the Commission, stating its grounds for the request. The party objecting to the trade secret claim shall request the Commission's review pursuant to this Order. Any such petition or motion must be served on the providing party, and the providing party may file a response or objection within 14 days. When the Commission rules on whether any documents, data, information, studies or other submitted matters are Proprietary Information, the Commission will enter an order resolving the issue.

(5) Request for Removal from Protection. Any party upon ten (10) days notice may file a request for removal of Proprietary Information from the protective requirements of this Order or from the sealed record, to be placed in the public record. Upon a challenge to the confidential or proprietary nature of this information, a hearing examiner and/or the Commission shall resolve the issue following proceedings in camera conducted with only persons present with authorized access to such confidential matter. The court reporter must sign an "Exhibit A." The record of in camera hearings shall be marked "PROPRIETARY--SUBJECT TO PROTECTIVE ORDER, DOCKET NO. D2000.1.11" and transcribed only upon agreement of the parties or Order of the Hearing Examiner or the Commission. If transcribed, the record shall be separately bound, segregated, sealed, and withheld from inspection by any person not authorized disclosure under this Order. There may be no release from the restrictions of this Order without either an agreement of the parties or an Order of the Hearing Examiner or the Commission. If the Hearing Examiner or the Commission should rule that any information should be removed from the protection of this Order or the sealed record, the parties shall not disclose such information or use it in the public record for seven (7) business days.

(6) Seal. While in the custody of the Commission, materials subject to this Order shall be marked "PROPRIETARY--SUBJECT TO PROTECTIVE ORDER, DOCKET NO. D2000.1.11." Due to the trade secret nature, these materials shall not be considered as records in the possession or retained by the Commission within the meaning of the open meetings or public records statutes.

(7) Citations and References in Pleadings and Briefs. Reference to Proprietary Information in the sealed record, when necessary in pleadings, cross-examination, briefs, argument or motions, shall be by citation of title or exhibit number or some other nonconfidential

description. Substantive references to Proprietary Information shall be placed in a separate section of the pleading or brief and submitted to the Commission under seal. This sealed section shall be served only on counsel of record (one copy each) who have signed an Exhibit "A." All the protections afforded in this Order apply to materials prepared and distributed under this paragraph.

(8) Reference to Proprietary Information.

(a) Use in Decisions and Orders. When practicable, the Commission will refer to Proprietary Information in only a general form and will avoid reproduction in any decision of Proprietary Information to the greatest possible extent. If it is necessary in this proceeding to discuss Proprietary Information other than in a general form, the discussion with this protected information shall be placed in a separate section of the Order or Decision under seal. This sealed section shall be served only on counsel of record (one copy each) who have signed an Exhibit "A." Counsel for other parties shall receive the cover sheet to the sealed portion and may review the sealed portion on file with the Commission once they have signed an Exhibit "A."

(b) Summary for Record. When filing material pursuant to this order considered to be Proprietary Information, Applicants shall concurrently file a brief non-proprietary written summary of the Proprietary Information. If deemed necessary by the Commission, Applicants shall prepare a written summary of the Proprietary Information referred to in a decision or order to be placed on the public record.

(9) Segregation of Files. All Proprietary Information filed with the Commission will be sealed by the Commission, segregated and withheld from inspection by any person not bound by the terms of this Order. Proprietary Information may be released from the restrictions of this Order by agreement of the parties or, after notice and hearing, pursuant to an Order of the Commission or an order of a Court having jurisdiction. The Consumer Counsel may retain all written Proprietary Information obtained under this order, but shall withhold it from inspection by others, except for Consumer Counsel staff and counsel, unless it is released by the Public Service Commission and/or a final order of a court under this paragraph, subject always to the terms of confidentiality in this Order.

(10) Preservation of Confidentiality. All persons receiving access to any Proprietary Information by reason of this Order shall neither use nor disclose the Proprietary Information for purposes of business or competition, or any purpose other than to prepare for and conduct this

proceeding as provided in this Order, and shall take reasonable precautions to keep the Proprietary Information secure, pursuant to this Order.

(11) Reservation of Rights. The parties affected by the terms of this Protective Order further retain the right to question, challenge and object to the admissibility of any and all data, information, studies and other matters furnished under the terms of this Protective Order in response to interrogatories, requests for information or cross-examination on the grounds of relevancy or materiality.

(12) Nonwaiver of Rights. This Order does not constitute any waiver of the rights of any party in this Docket to contest any assertion or finding of trade secret, confidentiality or privilege, and to appeal such determination of the Commission or such assertion by a party.

(13) Amendment or Modification. The Commission retains jurisdiction of this matter and may alter or amend these provisions, upon motion by an appropriate party and reasonable notice.

DONE AND DATED this 28th day of March by a vote of 5 - 0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

DAVE FISHER, Chairman

NANCY MCCAFFREE, Vice Chair

BOB ANDERSON, Commissioner

GARY FELAND, Commissioner

BOB ROWE, Commissioner

ATTEST:

Kathlene M. Anderson
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See ARM 38.2.4806.

EXHIBIT "A"

I have reviewed the foregoing Protective Order in Docket No. D2000.1.11 dated March 28th, 2000 and agree to be bound by the terms and conditions of such order.

Signature

Typed or Printed Name

Employer or Firm

Business Address

Party

Date